



**Office of the Attorney General
State of Texas**

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December 31, 1993

Honorable Judith Zaffirini
Chair
Health and Human Services Committee
Texas State Senate
P.O. Box 12068
Austin, Texas 78711

Letter Opinion No. 93-116

Re: Scope of requirement of Local Government Code section 232.0047 that a utility provider in certain counties hold a certificate of compliance with platting requirements with respect to land it connects with utility service (ID# 22879)

Dear Senator Zaffirini:

You ask about the scope of the requirement of Local Government Code section 232.0047 that entities providing utility services in certain counties¹ "may not serve or connect any land with water, sewer, electricity, gas or other utility service unless the entity has been presented with or otherwise holds a certificate applicable to the land issued under Section 232.0046," indicating compliance with the platting requirements of chapter 232. *See id.* §§ 232.001 (requirement that owner of tract outside municipal limits file plat with county clerk when he subdivides tract); 232.0015 (exceptions to requirement); 232.002 (commissioners court approval of plat); 232.003 (specific requirements applicable to subdivisions commissioners court may adopt). Subsection (c) of section 232.0047 describes the kinds of utility providers covered by the section.

With respect to the "certificate" requisite under section 232.0047 for such utility providers serving or connecting land in the covered counties, section 232.0046 provides for the commissioners court to issue it "on approval of a plat" "to the person applying for the approval," or, upon the written request of an owner of land, a utility provider or the commissioners court, to issue a certificate with respect to land either that a plat is not required for the land or, if a plat is required and has been submitted and approved, to issue a certificate to that effect.

¹The requirements of section 232.0047 apply only to "land covered by section 232.0046." Section 232.0046 in turn provides that it applies "only to a county described by Section 232.0035(a)(1). The counties "described" in section 232.0035(a)(1) are those either "contiguous to an international border" or "in which a political subdivision has received financial assistance through Subchapter K, Chapter 17, Water Code." The referenced Water Code provisions authorize state assistance for water supply and sewer service projects to certain economically distressed counties, or municipalities, water districts, or non-profit water supply corporations located in such counties.

The focus of your concern is the provision of subsection (d) of section 232.0047 that the section's prohibition on a utility provider's serving or connecting land unless it holds the requisite certificate "applies only to land that [a utility provider] *first serves or connects with services on or after September 1, 1989.*" (Emphasis added.) We understand that questions have been raised as to whether the language of subsection (d) includes, and therefore makes subject to the section's certificate requirement, land which was served by or connected with utility services *prior* to September 1, 1989, where the recipient of and/or billing for the services has changed since that date--for example, if a new tenant has taken up occupancy of the premises since September 1, 1989, and had previously connected utility services reconnected so that they are billed in his name.

While we cannot anticipate all issues which may arise in particular factual settings, it is our opinion as a general matter that the effect, on its face, of the language of subsection (d) is to except from the section's requirement, that a utility provider hold a certificate before connecting the utility service it provides, "land" which the provider had connected or served with the utility service prior to September 1, 1989, even if there have been changes subsequent to that date in the persons or entities receiving and being billed for such service. This conclusion is, we think, especially supported by the fact that the legislature used the language "*land that a . . . [utility provider] . . . first serves or connects*" rather than referring to the individual or entity receiving services. Also, its use of the language "*first connects,*" emphasizes, we believe that the provision excludes from the ambit of section 232.0047 land first connected before September 1, 1989, even if there have been subsequent "disconnections" and "reconnections" of service as the tenants receiving the service have changed.

S U M M A R Y

Subsection (d) of section 232.0047, Local Government Code, excepts from that section's requirement--that a utility provider in certain counties hold a certificate of compliance with platting requirements before connecting the utility service it provides--"land" which the provider had connected or served with the utility service prior to September 1, 1989, even if there have been changes subsequent to that date in the persons or entities receiving and/or being billed for such service.

Yours very truly,



William M. Walker
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Opinion Committee